

**MEETING**

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m. by Chairperson Zermeño, followed by the Pledge of Allegiance.

ROLL CALL

Present: COMMISSIONERS Bogue, McKillop, Sacks, Fraas, Halliday, Thnay
CHAIRPERSON Zermeño
Absent: COMMISSIONER None

Staff Members Present: Anderly, Conneely, Emura, Looney, Patenaude

General Public Present: Approximately 10

PUBLIC COMMENT

Paige Bennett discussed the fence height ordinance and asked for reconsideration of raising it. She volunteered to be part of a focus group to discuss the possibility. She also named a number of cities, which have similar 7-foot fence ordinances.

Julio Milañi discussed not having a signal light at the left turn at Second Street coming from D STREET. He noted a number of accidents and requested consideration of this request.

AGENDA

1. Variance No. PL-2003-0462 – Marlene Milani (Applicant) / Julio and Rubi Magaña (Owners) – Request for a Variance to Allow a Garage With a 14-Foot Front Setback Where 20 Feet is Required and 3'6" and 5'0" Side Yards Where 6'-8" is Required – The Project is Located at 24025 Second Street (Continued from January 8, 2004)
2. Appeal of Denial by Planning Director of Administrative Use Permit Application No. PL-2003-0576 – Mo Janda (Applicant/Owner) – Request to Allow Truck and Bus Driving School – The Project is Located at 2977 Baumberg Avenue (Continued from January 22, 2004)

PUBLIC HEARINGS

1. Variance No. PL-2003-0462 – Marlene Milani (Applicant) / Julio and Rubi Magana (Owners) – Request for a Variance to Allow a Garage With a 14-Foot Front Setback Where 20 Feet is Required and 3'6" and 5'0" Side Yards Where 6'-8" is Required – The Project is Located at 24025 Second Street (Continued from January 8, 2004)

Associate Planner Emura noted that staff asked again for denial of the variance since there is

not enough depth in front of the garage to accommodate cars parked in the driveway. He described the application and the projected addition to the home. He commented that conditions of approval could also include further enhancements of the addition.

Commissioner Thnay asked what the difference was in the staff report recommendation, since they were still recommending denial. He also asked about the comments in the staff report requiring replacing the existing porch posts, etc.

Associate Planner Emura explained that the previous report did include findings and conditions.

Planning Manager Anderly responded that when you add a second story, it looks like you are adding more bulk. Making the posts more substantial and adding railings gives greater balance to the structure. She noted that they have done a good job of following the lines of the house.

Chairperson Zermeño asked about condition 12, and how the applicant would know whether they were 5-feet from the utilities, and whether the City would give them guidance.

The public hearing opened at 7:41 p.m.

Marlene Milani said the applicant objected to condition 7, requiring the applicant to record a document saying the garage will be used for car parking only. She maintained that this is inconsistent with the privileges that all the neighbors are already enjoying. She noted that on January 11, they met with 22 neighbors who all support the addition to the home. She added that the applicant has 3 children in one bedroom at this point so this is not a luxury but rather a necessity.

Commissioner Bogue asked about the second story windows facing Second Street.

Ms. Milani explained that the size and shape of the windows are in the same style as the rest of the addition. She said she would work with the City staff to do anything necessary to make them acceptable. She discussed the design further with Commissioner Bogue saying she would work with staff.

Commissioner Thnay commented on staff suggestions for changing the fence from chain link and using a more decorative fence on the Second Street frontage.

Ms. Milani agreed that the chain link fence would have to go. She added that a larger column would add enhancement to the property.

Commissioner Halliday asked about the objection to condition number 7.

Ms. Milani explained that no one else in the neighborhood had been asked to record a document to the effect that the garage will be for car parking only. Were they to want to move in the future, the covenant would be a detriment to selling the house.

Commissioner Halliday asked staff whether this has been required in any other case.



Planning Manager Anderly explained that quite often this is dealt with on the homeowner association level. However, many people use their garage for storage. In this case, they are currently using their property to park. They will not be able to park on the property without parking illegally once the addition is complete.

Commissioner Halliday said that with the applicant asking for two variances, the City of Hayward needs to require the assurance that the applicant will be parking in the garage.

Ms. Milani indicated that there is no objection to the requirement to parking in the garage. She emphasized again that this requirement is inconsistent with what others are able to do.

Commissioner Thnay asked about subdivisions having Homeowners Associations requiring the use of the garage only for cars.

Planning Manager Anderly said that these are enforced by the Homeowner's Association. In this instance, it is different since there is no association to enforce the covenant.

Commissioner Fraas commented that the addition is unusual and that this is a requirement the City of Hayward requires for safety issues.

Julio Magaña explained that he would need the garage not to live in, but for parking only. There would be no one living in the garage. He suggested that by having the gate across the driveway, he could not park on top of it. He asked about the survey of the property. There is no question of where the property line is. Neighbors have signed the petition approving his addition. He said he would change the chain link fence. He commented on the various reasons for having his gate and fence. He said the reasons are for safety and security. He said he needed the gate for his dog. He concluded that the survey of the property is more expense and not necessary.

Commissioner Halliday asked about the number of cars they own.

Mr. Magaña said he has four cars adding that there are an unbelievable number of people living in that neighborhood. He commented on the number of apartments around them. He added that he feels that the two spaces in front of his house are his.

Commissioner Halliday suggested that although the restriction is not required of others on the street, because he is asking for a variance and parking in the area is impacted.

Commissioner Sacks asked staff about the intent of the topographic survey. She also asked about the right of a property owner parking in front of their house.

Associate Planner Emura said the purpose of a topographic surevey is to determine if the

height of the house is within the 30-foot height limit. It is not to locate the property lines.

Planning Manager Anderly agreed it is not the right of the property owner to consider the space in front of their home as their personal parking area. It is public right-of-way.

Commissioner Fraas explained that staff has denied the application twice and since none of the conditions seem onerous, the Commission is trying to help them go forward with the project.

The public hearing closed at 8:08 p.m.

Commissioner Thnay suggested staff had come up with good conditions. Condition 7 is a good condition because of safety and the fact that they would be granting of a variance. He moved, seconded by Commissioner Halliday, to approve the variance subject to findings and conditions, and he added condition 13, to provide a more decorative door, install more substantial column posts, and add a decorative fence.

Commissioner McKillop said she felt that condition 7 is appropriate. It is not a right, it is a variance. She would support the motion.

Commissioner Sacks said she would not support the motion. She objected last time as well. The applicant had given her additional basis to be concerned about the accumulative effect of the cars on the street. This is the first step to making a mess in this neighborhood. If each house in the neighborhood were to double their size, there would be serious problems. This is a preserving the integrity of the neighborhood.

Commissioner Bogue commented on condition 7 saying that this recording is required from all new development. There might be an argument to have the gate but it should match the fence. He had assumed some give and take for the variance. It is sounding as though the applicant has opposition to parking cars in the garage, as a result he was not sure he could support the motion.

Chairperson Zermeno urged everyone to support the motion. He noted that there was one negative to all the positives from which the family would benefit. It is normally assumed that people who are building an extension will not live in a garage. He suggested that the family could live with condition 7.

The motion carried by the following vote:

AYES:	COMMISSIONERS	Halliday,	Thnay,	Fraas,
		McKillop		
	CHAIRPERSON	Zermeno		
NOES:	COMMISSIONER	Sacks, Bogue		
ABSENT:	None			
ABSTAIN:	None			



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2. Appeal of Denial by Planning Director of Administrative Use Permit Application No. PL-2003-0576 – Mo Janda (Applicant/Owner) – Request to Allow Truck and Bus Driving School – The Project is Located at 2977 Baumberg Avenue (Continued from January 22, 2004)

Principal Planner Patenaude described the location as well as the proposal. He explained that staff is still recommending denial of the application. However, staff would recommend appropriate standards and additional property improvements be enforced because of the possibility of setting a precedent for future applications in the Industrial District. Staff still recommends replacing the modular unit, improvement of the streets along the property frontage, as well as minimum code requirements and design standards. He noted that the street improvements were not under the purview of the Planning Commission adding that there are no plans in the near future to improve this street otherwise. The applicant will incur more cost with the requirement of a sanitary sewer line across to the property to Industrial Boulevard.

Commissioner Halliday asked about the City engineer requiring improvements only in front of this property and what the safety issues there would be without the improvements.

Principal Planner Patenaude indicated that the safety issue is that with the full improvements, there will be a delineation of lines on the street as well as parking spaces. The existing pavement is deteriorating. It is a standard condition to require placement at this time, this might be the only way to get these improvements. This is about two-thirds of Baumberg Avenue.

Commissioner Halliday asked about the sewer line and whether it should be placed before sidewalks. She asked whether the City has any plans to extend the sewer line down Baumberg Avenue.

Principal Planner Patenaude explained that this property is the furthest away from the sewer line.

Commissioner Halliday commented that the applicant was told it would cost about \$200,000 to develop the sewer line. She then asked what could be put on that property to make the cost worthwhile.

Principal Planner Patenaude explained that a development could occur on this property. It is a sizeable piece of property and could be expected that a development could support the cost of improvements.

Planning Manager Anderly explained that the City Engineer's position is that if there is a reason to show physically why it cannot happen, the applicant might be able to avoid doing it. Otherwise the applicant could apply to the City Manager's discretion to honor an appeal for not doing so, possibly hardship.

Commissioner McKillop asked about a sunset on a use permit, subject to review later on.

Assistant City Attorney Conneely said it would be difficult since the permit runs with the land, so unless there is justification from the initiation of the use permit to limit the life of the permit, it could subject to challenge. If the City is looking toward a change in circumstances of that property in the future, it might possibly appropriate. These factors do not exist here.

Commissioner McKillop said she saw that this business does not seem to generate enough revenue to require all these improvements.

Commissioner Sacks asked about condition 1 and the permit becoming void after a year.

Principal Planner Patenaude explained that the expiration would be due to the applicant not complying.

Planning Manager Anderly added that staff is already making an exception. Most businesses need to comply before they move into their business. He is being rewarded because he's moved in and now is being given time to comply.

Commissioner Sacks discussed the regulation of the modular unit and whether the State of California has control over the modification. She asked about the City's involvement.

Principal Planner Patenaude said the State would have final review of the outside of the structure. City might require certain improvements, it would still be subject to State approval. The difficult part is requiring additions to a modular unit, which, in turn, may not be approved by the State.

Commissioner Bogue asked for further information regarding appealing the sewer to the City Manager, would the commission appeal, or make the decision first, and have the applicant appeal.

Principal Planner Patenaude explained that the request for a variance from the requirements would be made by the property owner.

Commissioner Bogue asked about the modifications to a modular unit, if the City and applicant would agree then the state would still have to approve.

Commissioner Fraas asked whether, if this were an empty lot, these same conditions would apply.

Principal Planner Patenaude responded that yes, they would, were the property vacant.

Chairperson Zermeño asked whether a false façade in front of the present modular be acceptable.

Principal Planner Patenaude said this might be addressed, but anything attached to the modular would have to go through the State.



Chairperson Zermeno indicated that conditions required within 30- to 60-days, might bankrupt the business.

Planning Manager Anderly stated that none of the conditions take into consideration the individuals ability to pay. However, the Planning Commission does have the ability to change the time-line.

Chairperson Zermeno asked regarding the sewer line and whether this applicant would have to pay for everything.

Principal Planner Patenaude said they could look into forming a district for any future property owners who might tap into the sewer line later.

Commissioner McKillop explained that she was wrestling with the timing of these conditions of approval. Is there an extended period of time to meet these conditions.

Planning Manager Anderly responded that the street improvement is not in the purview of the Planning Commission.

Chairperson Zermeno asked whether they were going beyond their authority.

Assistant City Attorney Conneely explained that it was her understanding that the sewer improvement requirement was not something from which they had the authority to vary.

Commissioner Fraas commented that it was her understanding from the last meeting that the applicant had said he "would do anything to be able to continue his business on that site."

The public comments opened at 8:41 p.m.

Shirley Soto explained that Mr. Janda would do anything to keep his business, however, he asked for time to meet the conditions of approval. What the City of Hayward is requiring is virtually impossible. He has to hire surveyors and civil engineers which all takes time. She noted that they left the last time, believing he might have three years to keep the modular. Now it's one year and he needs to get a building permit. On the paving, the City requires minimal, however, he has determined that he will pave the whole yard. As to the trash enclosure, Item 6, when he builds his building he will have a trash enclosure. Right now, he has a 40-gallon trash can.

Arun Shah, structural engineer, noted the time lines would not give him enough time for anything. He noted that they were talking about a year to get everything to the department.

Chairperson Zermeno asked for him to discuss the conditions and how long each might take.

Mr. Shah explained that the lot line adjustment takes six months to a year. After that everything should fall into place.

Moe Janda delineated a number of conditions, which could not be met within the time frame asked for the City of Hayward.

Commissioner Thnay asked what a reasonable time frame would be for implementing the time frame asked by the City of Hayward.

Mr. Janda explained that he would need three to five years to arrange financing to buy the property at the corner of Industrial and Baumberg when it comes up for sale.

Commissioner Fraas explained that the Commission has no control over the conditions involving the street improvements or sewer lines.

Commissioner Halliday asked whether he was prepared to meet the sewer and sidewalk and street improvements.

Mr. Janda said it would be financially impossible now. He will try his best. He noted that he has made improvements. There are numerous other companies on this street with no improvements. However, he cannot do everything at one time.

Commissioner Halliday said she could justify the use of the modular building while he makes some of the other improvements to the property.

Assistant City Attorney Conneely said she checked the Sanitary Sewer Ordinance and the applicant could appeal to the City Manager for additional time as well.

Commissioner Halliday said if he plans to do these improvements, the Planning Commission might be able to ease up on the modular.

Commissioner McKillop asked staff whether because the permit becomes void in 2005 and how difficult it would be to get an extension.

Principal Planner Patenaude explained that the one-year is a zoning ordinance provision. The applicant might request to come before the Commission and show why it was impossible to meet the provision. They can apply for up to two one-year extensions.

Ms Soto asked that since he has only 30-days to get a permit for the modular. She asked what if the City staff denies it.

Principal Planner Patenaude said that it would be dependent on the conditions the Commission requires. Staff is recommending that it be removed. So it is dependant on the conditions the commission places on the building.

Chairperson Zermeño reiterated that he had suggested a false façade in front of the building.



Ms. Soto re-emphasized that all Mr. Janda wants is time.

Commissioner Halliday asked about the timing of the corner property becoming available.

Commissioner Fraas suggested that the property coming up for sale seemed nebulous, so how much time did Mr. Janda think he needed.

Ms. Soto explained that he needed enough time to do the improvements. He needs to either buy the property or put up a permanent building. She added that three years would be the maximum.

Mr. Janda added that he did not understand he needed a use permit. He has a City Business License.

Commissioner Fraas said three years is a really long time.

The public hearing closed at 9:00 p.m.

Commissioner Bogue suggested that perhaps this is not the time to decide this. The applicant needs to look at his property. He asked the Assistant City Attorney whether they should not postpone the issue and come back in 6-months.

Assistant City Attorney Conneely said the time frames that need to be worked observed in acting on an application. She suggested it would be more appropriate to act on the application. If they are inclined to deny without prejudice, it would permit the applicant to bring back again in 6-months. However, he would have to cease operations in the meanwhile.

Commissioner Bogue suggested that the time frames seemed like a very short time for what the applicant was expected to do.

Commissioner Sacks agreed that she was surprised at the short turnaround and annoyed that there were no minutes from the last meeting to go along with the report. She then asked what if the commission were to approve the package as is without any modifications, what can the applicant do with our approval if there are parts he can't live with. She then moved, seconded by Commissioner Fraas, to approve the application with the conditions of approval.

Principal Planner Patenaude noted the Commission was required to state findings of approval.

Chairperson Zermeño asked about an amendment for a one-year extension .

Commissioner Sacks then presented findings for approval.

Commissioner Halliday asked whether if the Commission approves this motion, might it be

killing this business. She noted that it seems there are modular buildings all over the City of Hayward at all school sites. As long as there is an appropriate time limit for him to come back, she would be inclined to grant him more time on the new building as well as some of the other conditions. She added that Mr. Janda came up with a business permit and no use permit. She then asked whether there might be any way for staff preparing a business permit application to guide people toward a use permit. As it stands she said she would oppose the motion.

Principal Planner Patenaude explained that this is not the use they came in with.

Commissioner McKillop said she was also inclined to give them more time. She asked the maker of the motion whether she would approve amendments to extend some of the time requirements.

Commissioner Sacks said she was not in favor of amendments. By approving this now, applicant has the opportunity to appeal the decision and then be specific about his needs for more time on which conditions. She proposed to leave it intact so if it is approved, they can continue to operate.

Assistant City Attorney explained that they could operate and appeal to the City Council for relief.

Commissioner Fraas said she seconded the motion as an opportunity to make sure projects reflect the direction of the City.

Commissioner Sacks commented on the fascinating polar differences between her reasons for the motion and the comments of the seconder.

Commissioner Bogue said the Commission would most likely hear this as a revocation.

Assistant City Attorney Conneely said the applicant would have the opportunity to appeal the revocation of the use permit at which point modification of conditions could be opened at that time.

Commissioner Bogue suggested they look at some of these requirements and extend the time to comply. He suggested that the list of requirements would be impossible to meet. He said requiring the drainage plan within 90-days, implement 120 days, seemed reasonable. He asked for a friendly amendment to the motion.

Chairperson Zermeño suggested that they had helped the small business owners in the past.

Commissioner Sacks asked for a specific number.

Commissioner Bogue suggested looking at them one at a time, and then withdrew his request for a friendly amendment.

Commissioner Sacks said she had a change of mind regarding the amendments.



Commissioner McKillop noted condition 3 to read 90-days and 120-days, same for 5, 13 and 27. She noted the landscaping could be done.

Commissioners Sacks and Fraas agreed.

Commissioner Thnay suggested the amendments are good, however, he had concern about taking out the modular within a year. Unfortunately, the set of circumstances suggests giving the applicant the benefit of the doubt. This is a huge site, if there is a master plan the applicant could come back to the City within six months with a plan regarding something that is a better way to do it. He said he would support the motion but the typical way for a developer to come into the City of Hayward is to spend a year or two getting engineers and all the right people to meet the conditions. Mr. Janda does not have a master plan. The more time he has to do something the more ideal it will be. He noted that vacating the modular building within one year with the present economy is onerous.

Commissioner Halliday said she would agree and will support the motion. She then asked staff how long some of the modular units for temporary use on sales offices and sales offices stay up.

Principal Planner Patenaude said it is based on the sales of the homes. As to construction trailers, they can remain for the life of the building permit.

Planning Manager Anderly interjected that there were two other instances where modular buildings were approved on a temporary use. At Kaiser Hospital while they built their pharmacy, they had applied for a year and was in effect for three years. They applied for an extension while construction remained. A church had a modular at a school. There was a deadline for taking those out, ended up being there more than the original year. She noted that Mr. Janda could come back at any time to modify the conditions of approval.

Commissioner Halliday asked for an extension of 90-180 days, six months for condition number 3.

Commissioner McKillop agreed that the more time we give the applicant, the chances are we will not see him back here.

Both Commissioners Sacks and Fraas agreed.

Chairperson Zermeno asked about the trash enclosure and whether an amendment would be acceptable.

Commissioner Bogue suggested the trash enclosure is required to be big enough for storage of all of the amount of trash whatever the volume.

Chairperson Zermeño asked for a clarification that the applicant can go to the City Manager for an extension on the Sewer.

City Attorney Conneely agreed and said the applicant can also request modifications for conditions of approval at any time.

The motions was approved unanimously.

Chairperson Zermeño told the applicant that he had 10-days to appeal the decision.

ADDITIONAL MATTERS

3. Oral Report on Planning and Zoning Matters

Planning Manager Anderly said there were no items, adding that the next meeting was scheduled for three weeks, February 26th.

Principal Planner Patenaude added that this was the reason this application was on tonight's meeting, so Mr. Janda did not have to wait.

4. Commissioners' Announcements, Referrals

Commissioner Sacks discussed the Forum of Redwood City. She noted that three staff members from Planning Department were there. She encouraged other members to attend the next meeting on March 3. The topic was transit-oriented development. She noted several things from the meeting. Building neighborhoods, not sprawl; challenge of mixed income neighborhoods; transit efficient mortgage; low expectations versus quality; honesty about what is possible; be focused; how to be smarter about how to tee up good projects; leadership at the local level remove hurdles for businesses. She said she would like to hear staff comments on these various items.

Chairperson Zermeño discussed various invitations he had received including a recycled product trade show in Sacramento.

Commissioner Halliday said she met with a group of young people from Commpre who talked about some projects in town such as Chuck-E Cheese selling beer, and the alcoholic beverage sales at Target. They felt that when they commented on a project, the Commission should be informed.

Planning Manager Anderly explained that some sales permits are not discretionary so that maybe they are not referred to the Commission. She said staff is very aware of all the applications out there. Many are not acted on by the Commission, the applicants are allowed by right to do that. She added that staff makes sure to include the information in the staff reports when the Commission does hear an item.

APPROVAL OF MINUTES

- January 8, 2004 - approved

MINUTES



**REGULAR MEETING OF THE PLANNING
COMMISSION, CITY OF HAYWARD
Council Chambers
Thursday, February 5, 2004, 7:30 P.M.
777 "B" Street, Hayward, CA 94541**

ADJOURNMENT

The meeting was adjourned by Chairperson Zermeño at 9:38

APPROVED:

Christopher Thnay, Secretary
Planning Commission

ATTEST:

Edith Looney
Commission Secretary